IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No 179 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

M/S.J.B.PATEL & COMPANY.

Versus

DY.C.I.T.

Appearance:

1. TAX APPEAL No. 179 of 2003
MRS SWATI SOPARKAR for Petitioner No. 1
MR TANVISH U BHATT for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 22/07/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

Admit. The following substantial questions of law arise in this appeal :

(1) Whether, on the facts and in the circumstances of the case, the ITAT was right in law in exceeding its jurisdiction and going much beyond the issue regarding allowability of certain expenditure against the additional rent received by the appellant and coming to the conclusion that the additional rent itself is not rental income from house property assessable u/s 22 of the Act?

(2) Whether, in the facts and circumstances of the case, the ITAT was right in law in directing the respondent to assess the additional rental income as 'Income from Other Sources' which was not even the case of the respondent before the ITAT?

2. The learned advocates appearing for the parties have requested this court to hear the appeal today as the issues, which are involved in the appeal, can be decided immediately.

3. Looking to the said request of the learned advocates, the appeal is taken up for final hearing today.

4. The facts giving rise to this appeal are as under:

4.1 The appellant-assessee is having a building named 'Pushpak' in Ahmedabad. The said building has been leased to Voltas Ltd. and Indian Standards Institution. In addition to providing the premises to the said tenants, certain services are also provided and for that purpose sweepers, pumpman and liftman are also employed by the assessee. Moreover, the assessee also incurs expenditure towards electricity charges. The amount towards such expenditure was claimed by way of deduction from the amount of rent received by the assessee. The Assessing Officer disallowed the said expenditure and, therefore, the assessee filed an appeal before the CIT (Appeals). The CIT (Appeals) allowed the expenditure and, therefore, the revenue filed a second appeal before the Tribunal.

4.2 The Tribunal heard the concerned parties and

remanded the matter to the Assessing Officer for deciding it afresh with certain directions. The Tribunal has also directed the Assessing Officer to treat the income by way of rent as additional rent so as to include the same under the head 'Income from Other Sources'.

5. Learned advocate Shri Kothari appearing for the appellant-assessee has submitted that it was not within the scope of the appeal to decide whether the income, which the assessee had earned, was "income from other sources". It has been therefore submitted by him that it was not just and proper on the part of the Tribunal to give such a direction, especially when certain lease deeds and documents executed between the assessee and the tenants had also not been examined by the Assessing Officer and more particularly when the said documents were to be placed before the Assessing Officer for its interpretation. It has been, therefore, submitted by him that the order passed by the Tribunal deserves to be quashed and set aside.

6. On the other hand, Standing Counsel Shri Tanvish Bhatt appearing for the respondent has submitted that the impugned order passed by the Tribunal is just and proper. It has been submitted by him that it was open to the Tribunal to give necessary directions so as to assess the income of the assessee in a proper manner.

7. We have heard the learned advocates and have also gone through the impugned order passed by the Tribunal.

8. From the facts stated in the impugned order, it is very clear that the Assessing Officer was not having certain documents, which had been executed between the assessee on one hand and the tenants on the other. Even as per observations made by the Tribunal, it was necessary for the Assessing Officer to look into the said documents for the purpose of determining allowability of the expenditure claimed by the assessee. The Tribunal had prima facie found that the CIT (Appeals) was not right when he had allowed the expenditure without looking at the documents referred to in the impugned order.

9. Even we are of the view that when certain important documents were not placed before the Assessing Officer and when the Assessing Officer had to go through the said documents, the Tribunal ought not to have given any direction to the Assessing Officer to assess the income of the assessee in a particular manner. The Tribunal ought to have left it to the Assessing Officer to assess income of the assessee in accordance with law

after considering the documents, which are to be placed before the assessing officer.

10. In view of the facts stated hereinabove, in our opinion, the tribunal was not justified in giving any direction other than the direction with regard to remand to the Assessing Officer.

11. In view of the above facts, we answer both the questions in the negative, i.e., in favour of the assessee and against the revenue. As a result of this order, the Assessing Officer shall assess the income of the assessee as directed by the Tribunal, but without considering the directions contained in para 6 of the Tribunal's order and the Assessing Officer shall assess the income of the assessee in accordance with law without being influenced by any observations made by the Tribunal and after considering effect of the documents which might be placed on record.

The appeal stands disposed of as allowed with no order as to costs.

(A.R. Dave, J.)

(A.M.Kapadia, J.)

(hn)